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IN THE

Supreme Court of the United States

October Term, 1960

No. .....

YOR-WAY MARKETS, a corporation, and E. W. KENNEDY,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the DEPARTMENT OF PUBLIC WORKS,

Respondent.

Respondent's Brief in Opposition to Petition for a Writ of Certiorari.

To the Honorable Supreme Court of the United States:

The above-named respondent respectfully prays that a Writ of Certiorari requested by petitioners in the above-entitled case not issue.

I.

Partial Restatement of the Case.

The general statement of the case is substantially correct. There are two items which should be restated.

The connecting road connects San Gabriel Avenue and Azusa Avenue and ends north of the Petitioner's

property. [Ex. B in Petition for Writ of Certiorari.] As stated by the Supreme Court of the State of California:[1]

> "*Azusa Avenue* is to be widened from its original 47 feet curb-to-curb to 80 feet curb-to-curb from the corner of Azusa and First to a point *north* of parcel 5 (approximately midway between First Street and the next parallel street to the north, Second Street) where a new proposed connecting road *will enter Azusa Avenue*." (Emphasis added.)

The Petitioners and the Respondent stipulated to the value of the part taken and the severance damages to the remainder by reason of the taking and the construction of the improvement in the manner proposed. The only items excluded were loss of business, good will and customers. [Clk. Tr. p. 58.]

II.

Reasons for Not Granting Petition.

One of the bases for the decision by the Supreme Court of the State of California was that the damages to any impairment of access (had there been any) were included in the amount stipulated to by the parties.[2] The stipulation included all diminution in *market value*

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[1] 54 A. C. 210, 215, 352 P. 2d 519, 522; Petition for Writ of Certiorari, Opinion of California Supreme Court, Appendix, page 26.

[2] *People v. Ayon*, 54 A. C. 210, 219, 352 P. 2d 519, 524; Petition for Writ of Certiorari, Appendix, page 32.

of the property—the standard concept of "just compensation."[3]

This Honorable Court has held that it will not review a State Court decision where the State Court's decision rests on an adequate and independent non-federal ground.[4] Here, the situation is within the meaning of this rule where the petitioners were held to have stipulated to the amount of damages arising from the alleged impairment of access.

It should also be noted that there is no claim to a total deprivation of access but only the deprivation of access from traffic traveling in one direction—access is maintained in one direction.[5]

In the cases cited by petitioners in regard to access the problems presented involved cases where there was a total deprivation of access.[6] Here, the petitioners still have direct access to the adjacent street.

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[3]*United States v. General Motors Corp.*, 323 U. S. 373, 379, 65 S. Ct. 357, 360, 89 L. Ed. 311, 319, 156 A. L. R. 390, 394.

[4]*Radio Station WOW, Inc. v. Johnson*, 326 U. S. 120, 65 S. Ct. 1475, 89 L. Ed. 2092.

[5]See Question Presented for Review, Petition for Writ of Certiorari, page 3.

[6]*Martin v. Creasy*, 360 U. S. 219, 79 S. Ct. 1034; *Schiefelbein v. United States* (1942), 124 F. 2d 945; *Union Electric Light & Power Co. v. Snyder Estate Co.* (1933), 65 F. 2d 297; *Donovan v. Pennsylvania Co.*, 199 U. S. 279, 26 S. Ct. 91, 50 L. Ed. 192, involving regulations of cabbies in front of railroad station.

III.
Conclusion.

Respondent respectfully prays that the Petition for a Writ of Certiorari to the Supreme Court of the State of California be denied.

Respectfully submitted,

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